

RADELL BRADFORD
Claimant

TREASURE CHEST ADVERTISING CO.
Respondent

AMERICAN CASUALTY OF READING PA.
Insurance Carrier

Docket Nos. 239,939 & 239,940

Claimant appeals Administrative Law Judge Julie A. N. Sample's August 2, 2000, Award. On July 18, 2001, the Appeals Board heard oral argument.

Claimant appeared by her attorneys, Allan H. Bell and Jeffrey S. Bell of North Kansas City, Missouri. Respondent and its insurance carrier appeared by their attorney, John David Jurcyk of Lenexa, Kansas.

The Appeals Board has considered the record listed in the Award. In addition, the date of the deposition of Tony Lavatai was taken on May 30, 2000, instead of June 6, 2000, and the date of Dr. Gary L. Baker's independent medical report is July 7, 1999, instead of July 7, 2000. Also, the Award shows Dr. Baker's deposition transcript included exhibits 1-10. The exhibits offered into evidence at Dr. Baker's deposition should be corrected to include exhibits 1-3 and 6-10, as exhibits 4 and 5 were withdrawn. The parties also agreed by stipulation to include as part of the record the medical records of Vito J.

Carabetta, M.D.

The Appeals Board adopts the stipulations listed in the Award.

ISSUES

The Administrative Law Judge (ALJ) consolidated these two separate docketed claims for litigation purposes. Docket No. 239,939 is a claim for a November 20, 1998, accident to claimant's right upper extremity. Docket No. 239,940 is a claim for a December 13, 1998, accident to claimant's left upper extremity. At oral argument before the Appeals Board (Board), the claimant clarified that she was claiming two separate scheduled injuries to her arms and was not claiming a whole body injury as a result of either a simultaneous aggravation of both arms or that the injury to the left arm was a natural and probable consequence of the first injury to the right arm.

The ALJ found claimant's bilateral carpal tunnel syndrome condition was neither caused nor permanently aggravated by the repetitive work activities claimant performed while employed by the respondent. The ALJ did find, based on the opinion of the independent medical examiner, Dr. Gary Baker, that claimant's work activities did cause an inflammatory condition in her right upper extremity and awarded claimant the statutory unauthorized medical allowance and future medical benefits upon application and approval only for the inflammatory condition. In regard to the left upper extremity, the ALJ found claimant failed to prove her work activities while employed by the respondent either caused or permanently aggravated her left carpal tunnel syndrome condition.

Conversely, respondent requests the Board to affirm the ALJ's Award. Before the ALJ, respondent also requested that the costs of the proceedings be assessed against the claimant because of the alleged untruthfulness that claimant arguably expressed repeatedly in these proceedings. The ALJ denied assessing the cost against the claimant except for the claimant and respondent's agreement that each would pay one-half the cost of Dr. Baker's deposition. During oral argument before the Board, the respondent dismissed the issue of assessing the costs against the claimant except for the parties' agreement as to the payment of the cost of Dr. Baker's deposition.

FINDINGS OF FACT & CONCLUSIONS OF LAW

After reviewing the record, considering the briefs and the parties' arguments, the Board makes the following findings and conclusions:

The Board concludes, based on reasons set forth in the Award, that the Award should be affirmed. The Board finds the ALJ's findings and conclusions are accurate and supported by the law and the facts contained in the record. It is not necessary to repeat those findings and conclusions in this Order. The Board approves those findings and

conclusions and adopts them as its own.

Claimant started working for the respondent on November 19, 1998, as a jogger. Claimant's primary work activity as a jogger was to take bundles of magazines or printed advertisement material run off a printing press in four inch high bundles that weighed from two to three pounds and stack the bundles on a skid. Claimant alleges her right hand and arm became symptomatic after only working part of the first day and one full twelve hour shift the next day. After claimant worked two more full twelve hour shifts, she then sought medical treatment for her right arm symptoms. Claimant alleges her right arm was asymptomatic before she started working for respondent.

Claimant first sought treatment for her right arm symptoms at a local hospital emergency room on November 27, 1998. Claimant was then seen on November 30, 1998, by another physician and was placed on light duty.

The light duty restriction was to not use her right hand and only work with her left hand. Claimant then alleges her left hand became symptomatic as she was scraping ink off the floor on light duty. The last day claimant worked was December 13, 1998, when she complained to her supervisor that her left hand was swollen and she was sent home. Claimant worked for the respondent a total of ten either full or partial work days from the day she started on November 19, 1998, through her last day worked of December 13, 1998.

On December 16, 1998, claimant underwent an electrodiagnostic study conducted by Vito J. Carabetta, M.D. Dr. Carabetta did not testify but the parties stipulated his medical records into evidence. The electrodiagnostic study was determined abnormal. Dr. Carabetta's findings were consistent with moderate right carpal tunnel syndrome and mild left carpal tunnel syndrome. Claimant's attorney, in a January 26, 1999, letter to Dr. Carabetta, asked Dr. Carabetta first whether claimant's working as a jogger for three days and light duty for another seven days was a "component producing cause of the carpal tunnel syndrome documented by the electromyographic testing." Dr. Carabetta replied, "The time period was too short to cause a compression neuropathy." Respondent's attorney further asked Dr. Carabetta, "Please briefly discuss the length of time necessary between an injurious event and the presence of a positive electromyographic test to the extent found in Ms. Bradford." Dr. Carabetta replied, "3 to 4 weeks minimum time is necessary, and usually takes considerably longer."

At the request of the ALJ, board certified hand and upper limb surgeon Gary L. Baker, M.D., performed an independent medical examination of claimant on May 24, 1999. The ALJ pursuant to K.S.A. 44-516 requested Dr. Baker to express an opinion on whether claimant's right upper extremity complaints were related to her work activities while employed by the respondent. Dr. Baker had for review claimant's medical treatment records including the records of Dr. Carabetta's electrodiagnostic test results.

Claimant provided Dr. Baker with a history of working four days on the printing press then being assigned to do one-handed light work duties. After conducting a physical examination of claimant, Dr. Baker's conclusion was that the claimant more than likely developed an inflammatory condition which was the result of work-related repetitive activities. This inflammatory tenosynovitis resulted in increased pain and slight hand, wrist, and forearm swelling. Dr. Baker concluded that the neurodiagnostic studies were more compatible with a longstanding disorder. Dr. Baker went on to opine that claimant did not develop carpal tunnel syndrome as a result of her employment with respondent. The doctor further testified that he would not assess any permanent functional impairment as a result of claimant's employment with respondent.

Respondent had claimant's lead operator, Tony Lavatai, who had supervisory responsibility over claimant testify in this case. Mr. Lavatai testified that on the first day claimant worked, November 19, 1998, he had her sign some personnel forms. At that time, Mr. Lavatai testified that he noticed claimant's hand was shaking when she signed the forms. He questioned the claimant about her hands shaking and she told Mr. Lavatai that she had developed a problem with her hands while she was operating a jackhammer while employed by the City.

Claimant was confronted with Mr. Lavatai's testimony and admitted that she had worked for the City but denied that she had developed a hand problem while operating a jackhammer with the City. Additionally, claimant was also questioned about her previous employment before she started working for respondent. Claimant testified she had worked for entirely different employers than she had put on respondent's employment application. Claimant also testified that when Dr. Baker saw her he did not give her a physical examination and he only spent a total of five or eight minutes with her. Dr. Baker, however, during his deposition testimony, reviewed his procedure that he follows in conducting a physical examination which included measuring range of motion with an goniometer, conducting the two part discrimination sensitivity test and using a Jamar dynamometer to measure grip strength.

The Board concludes, as did the ALJ, that the most persuasive medical opinion contained in the record is that of Dr. Baker who was appointed to conduct an independent medical examination of claimant. After taking into consideration the limited time claimant actually worked for respondent, Dr. Baker's impression was that the work activities claimant performed for respondent did not cause claimant's right carpal tunnel syndrome condition. The repetitive work activities while working for respondent only resulted in an inflammatory condition that caused increased pain and slight hand, wrist and forearm swelling.

The Board acknowledges that orthopedic surgeon Dr. Prostic, who examined claimant at claimant's attorney's request, did conclude that claimant's repetitive work activities while employed, even for the very limited period of time for respondent, either caused or contributed to her bilateral carpal tunnel syndrome condition. But Dr. Prostic's conclusions were based on claimant's history that she was asymptomatic before she went

to work for the respondent.

The Board also finds, as did the ALJ, that an important component in this case is claimant's credibility. Claimant's credibility is questionable based on her admitted untruthfulness concerning the jobs that she put on her application for employment with respondent, her denial that she injured her right hand while running a jackhammer for the City, and her assertion that Dr. Baker failed to conduct a physical examination of claimant.

The Board concludes, based on claimant's lack of credibility, Dr. Baker's persuasive medical opinion and the short time that claimant performed repetitive work for the respondent that the more plausible explanation for claimant's bilateral carpal tunnel syndrome condition is that the condition was symptomatic at the time that she started to work for respondent. Any increase in symptoms while she was working for the respondent simply was an inflammatory condition and did not result in any additional permanent worsening or injury to the claimant.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that ALJ Julie A.N. Samples' August 2, 2000 Award should be, and the same is hereby, affirmed in all respects.

IT IS SO ORDERED.

This _____ day of August, 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Allan H. Bell and Jeffrey S. Bell of Kansas City, Missouri
John David Jurcyk of Lenexa, Kansas
Julie A. N. Samples, Administrative Law Judge
Philip S. Harness, Workers Compensation Director